IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER 34/2007.

1. Shri. Mahesh Shanker Naik,
aged 35 years, s/o. Late Shanker
Rama Naik, in service, and his wife.

2. Smt.Meenali Mahesh Naik,
aged30 years, d/o. Sonu Morsekar,
in service;

3. Smt. Mayawati Shanker Naik,
aged 57 years, widow, wife of late
Shanker Rama Naik;

4. Shri. Dayesh Shanker Naik,
aged 32 years, s/o. late shanker
Rama Naik, in service;

5. Shri. Umesh Shanker Naik,
aged 30 years, s/o.late Shanker
Rama Naik;
all r/o House No.165/2, Luis Waddo,
Calata, Village Majorda, Taluka
Salcete, Goa;

6. Smt. Ruchika Rajendra Naik
aged 33 years, d/o late Shanker
Rama Naik, housewife; and her
husband.

7. Shri. Rajendra Sada Naik,
aged 37 years, s/o Sada Naik,
in service;
both r/o Village Balli, Taluka
Quepem, Post Office:, Cuncolim,
Salcete, Goa.

8. Mr. Raju Krishna Naik,
aged 37 years, married,
s/o. Late Krishna Sonu Naik,
Businessman;

9. Smt. Leena Raju Naik,
aged 29 years, d/o. Uttam
Hanurlekar, housewife;

10. Smt. Shobha Krishna Naik,
aged 43 years, d/o. Late Krishna
Sonu Naik;

11. Smt. Shaila Krishna Naik,
aged 37 years, d/o late
Krishna Sonu Naik;

12. Shri. Prakash Krishna Naik,
aged 33 years, son of Late Krishna
Sonu Naik;

13. Smt. Chaya Tukaram More,
aged 31 years, d/o. Late Krishna
Sonu Naik; and her husband

14. Shri. Tukaram Pundalik More,
aged 32 years, s/o. Late Pundalik
More; and

15. Smt. Kushavati Krishna Naik,
aged 66 years, widow, wife of
late Krishna Sonu Naik;
all r/o. Shirfod, Village Curchorem,
Taluka Quepem, Goa. .. APPELLANTS.

(The appellants Nos. 2,3,6 & 7 are represented herein by the Appellant No.1, by way of power of Attorney executed before K.S. Angle, Notary at Margaon, Goa, on 28.2.2004, and the Appellants No. 4 & 5 are represented herein by the Appellant No.1 by Power of Attorney executed before K. S. Angle, Notary at Margaon, Goa, on 18.11.2003. The appellants Nos. 9 to 15 are represented herein by the Appellant No.8 by way of Power of Attorney executed before Uday Ganesh Kudchadkar, Notary at

Curchorem, Goa, on 21.2.2004.)

Versus.

1. Shraddha Ispat Private Limited,
with office at Survey No.53/1,
Village Santona, Taluka Sanguem,
Post Office: Curchorem, Goa,
represented by its Chairman/Managing
Director/Authorized Signatory;

2. Shri. Prabhakar Rama Naik,
aged 68 years, s/o. Late Rama V.
Naik; and his wife

3. Smt. Indira alias Fullu Prabhakar
Naik, aged 60 years, housewife,

4. Shri. Sanjay Prabhakar Naik,
aged 40 years, s/o Prabhakar Rama
Naik, and his wife.

5. Smt. Tanuja Sanjay Naik,
aged about 35 years;

6. Shri. Lavu Rama Naik,
s/o late Rama V. Naik, aged 43
years, in service, and his wife

7. Smt. Laxmi Lavu Naik,
aged about 35 years;
all r/o Baagwada, Curchorem,
Goa;

8. Smt. Vassanti Rama Naik,
aged 40 years, daughter of late
Rama V. Naik; and her husband.

9. Shri. Suresh Gangaram Naik,
aged 40 years, in service;
both r/o. Kalika Square Bldg.,
Ground Floor, Near Bank of
Maharashtra, Gogol, Margaon,
Goa. .. RESPONDENTS

Mr. F. M. Reis,Advocate for the appellants.
Mr. N.N. Sardesai, Advocate for the respondent No.1.
Mr. P. A. Kholkar, Advocate for the respondent Nos. 2 to 9.

Coram :- **F. I. REBELLO.**

Date : - 21th November, 2007.

ORAL JUDGMENT :

Admit. Heard forthwith.

The appeal is against the order of learned Civil Judge,S.D.Qupem, dated 27.12.2006. The parties agree that the subject matter of the property is survey No.56/1. The appellants herein by way of interim relief had prayed for injunction to restrain defendant No.1, their servants, agents or any person from dumping of material or otherwise making use of the suit property and trespassing and or encroaching in the property. Mandatory injunction was sought to remove all the dumpings in the property.

At the hearing of this appeal, the learned Counsel states that only relief he now presses at this stage would be the relief by way of temporary injunction to prevent the respondents herein from putting up any construction in the suit property or change in the nature of the property or alienating the suit property.

There is no dispute that the respondent No.1 is in possession. According to the respondent No.1, the possession is pursuant to permanent lease deed. According to the appellants, the lease deed has not been registered and consequently, they deny the contention as contended by the respondent No.1. It is not for this Court at this stage to go into that issue. That can be decided at the time of hearing of

the suit.

The case of the appellants herein was that the suit by the appellant is for declaration that the lease deed is null and void and for the permanent injunction restraining the respondent No.1 from trespassing, encroaching in the suit property, for mandatory injunction and for mesne-profit. Considering the relief now which is restricted, it is really not possible to fault the order of the learned trial Court.

However, considering the reliefs, sought by the appellant, on instruction from his clients, on behalf of respondent No.1, their learned Counsel makes a statement that they have no objection to grant of that limited relief. In the light of that, the impugned order is set aside. There will be temporary injunction restraining the respondent No.1 from putting up any construction or changing in the nature of the property or alienating the property pending the hearing and final disposal of the suit. Appeal disposed of accordingly. There shall be no order as to costs.

F. I. REBELLO.

SMA